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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/545,288

04/07/2000

Stephane Ayala

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1602

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BUCHANAN, INGERSOLL & ROONEY PC
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EXAMINER

TRINH, MINH N .

ART UNIT

PAPER NUMBER

3729

NOTIFICATION DATE

DELIVERY MODE

06/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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In re Application of:
AYALA, STEPHANE et al
Serial No. 09/545,288
Filed: April 7, 2000
Docket: 032326-057

Title: METHOD FOR MAKING SMART
CARDS CAPABLE OF OPERATING
WITH AND WITHOUT CONTACT

DECISION ON PETITION
UNDER 37 CFR § 1.144

This is a decision on the petition filed May 25, 2010 under 37 CFR 1.181 requesting withdrawal of the restriction requirement as stated in the Advisory Action of February 19, 2009. This petition is being considered pursuant to 37 CFR § 1.144 and 37 CFR § 1.181, and no fee is required.

The petition is **dismissed as moot**.

In the petition, petitioner argues that the examiner's constructive election was not based on Chapter 800 of the MPEP procedure. The examiner failed to provide an explanation why the newly added claims 47-53 were directed to a non-elected invention or species. Therefore, petitioner concludes that the restriction requirement based on a constructive election should be withdrawn.

In the Office Action of February 19, 2008, the examiner essentially states that the application contains new claims 47-53 (with claim 51 cancelled on 11/14/09 amendment) which are directed to a non-elected species or invention. Since the applicant has received actions on the merits on the other elected claims, the newly added claims 47-50 and 52-53 were withdrawn from consideration.

A review of the relevant records shows the applicant has amended the newly added and constructive non-elected claims 47-50, and 52-53 on November 4, 2010 and also amended the elected claim 1 in the amendment filed on February 23, 2009. With the amendment to the claims, the restriction requirement by constructive election of February 19, 2009 is no longer applicable. However, the review of the restriction requirement of February 19, 2009 also shows that the examiner did not provide a clear explanation why and how the different inventions or species are independent or distinct in accordance with Chapter 800 of MPEP.

Therefore, the restriction requirement by constructive election promulgated on February 19, 2009 does not fully comply with applicable sections of MPEP § 800.

In view of the amendment to the elected and non-elected claims, the original election of species requirement by constructive election of February 19, 2009 is no longer applicable. The requested relief can not be granted. Non-elected claims 47-50 and 52-56 by constructive election remain withdrawn from consideration at this time. In order to clarify the restriction requirement by constructive election, the examiner is directed in the next Office action to provide a complete restriction requirement by constructive election based on the current claims presented in the November 4, 2009 in accordance with the Chapter 800 of MPEP procedure.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3729 awaiting for a response to the outstanding Office action of March 11, 2010.

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED AS MOOT.



Robert Olszewski, Director
Technology Center 3700